

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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A.M. GOODALE,

Plaintiff,

v.

**DECISION AND ORDER**

H.D. WETZEL, JR., et al.,

05-CV-616S(Sc)

Defendants.

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1. Plaintiff commenced this civil rights action *pro se* on August 29, 2005. In three separately filed motions to dismiss, all fourteen Defendants moved to dismiss certain claims against them for lack of jurisdiction and/or failure to state a claim. (Docket Nos. 12, 15, 17.)

2. The Court referred this matter to the Honorable Hugh B. Scott, United States Magistrate Judge, to hear and report upon dispositive motions and issue a Report and Recommendation for the consideration of the District Judge pursuant to 28 U.S.C. § 636(b)(1)(B).

3. In a Report and Recommendation dated May 1, 2007, Judge Scott recommended that Defendants' motions to dismiss be granted in part and denied in part. Specifically, Judge Scott recommended that: (a) the Complaint be dismissed in its entirety as against the New York State Department of Corrections, Michael P. McGinnis, Richard D. Roy, Paul Chappius, Jr., and Daniel J. Sullivan; (b) the Complaint be dismissed as to all other Defendants to the extent they are sued in their official capacities; and (c) that all

claims for injunctive relief be dismissed. However, it is recommended that the motion to dismiss claims against Richard Donahue in his individual capacity be denied, because Plaintiff has sufficiently alleged Donahue's personal involvement in purported constitutional violations. Though not specified in the Report and Recommendation, Judge Scott's analysis results in the Motions to Dismiss on behalf of Defendant Kathleen Murray (Docket No. 15) and Defendant J. Meehan (Docket No. 17) being granted in their entirety.<sup>1</sup> It is the Motion to Dismiss on behalf of the remaining Defendants (Docket No. 12) that is granted in part and denied in part.

4. No objections to the Report and Recommendation were received from either party within ten (10) days from the date of its service, in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3).

5. The Court has carefully reviewed Judge Scott's May 1, 2007 Report and Recommendation as well as the pleadings and materials submitted by the parties.

IT HEREBY IS ORDERED, that this Court accepts Judge Scott's May 1, 2007 Report and Recommendation (Docket No. 22) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that the Motion for Partial Dismiss on behalf of Defendants Dale Hillard, Richard Donahue, Paul Chappius, Jr., Michael P. McGinnis, Richard D. Roy, New York State Department of Correctional Services, H.D. Wetzel, Jr., David Alderman, Daniel J.

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<sup>1</sup> Murray and Mehan are not dismissed from the case, however, because their motions were for partial dismissal only. They did not move for dismissal of claims brought against them in their individual capacities. The same is true for the remaining Defendants (Docket No. 12) who are alleged to have been personally involved in the purported violations.

Sullivan, Randy Vanness, Mark Shumaker and Dominic Moffe (Docket No. 12) is GRANTED in part and DENIED in part; Defendant Kathleen Murray's Motion for Partial Dismissal (Docket No. 15) is GRANTED; and Defendant J. Meehan's Motion for Partial Dismissal (Docket No. 17) is GRANTED.

FURTHER, that the Clerk of the Court is directed to terminate the New York State Department of Corrections, Superintendent Michael P. McGinnis, Richard D. Roy, Paul Chappius, Jr., and Daniel J. Sullivan as Defendants to this action.

SO ORDERED.

Dated: June 15, 2007  
Buffalo, New York

/s/William M. Skretny  
WILLIAM M. SKRETNY  
United States District Judge